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Geri Pasquin v. John Pasquin, Jimmie Pasquin, The Estate of Kory Pasuin, Quality Parts, Quality Transport Refrigeration Parts, INC., Thomas A. Duffin, Daniel O. Duffin and Does : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

980293-CA

GERI PASQUIN,

Plaintiff and appellant,

**APPELLEE'S BRIEF OF THE
ESTATE OF KORY PASQUIN**

vs.

JOHN PASQUIN; JIMMIE PASQUIN;
THE ESTATE OF KORY PASQUIN;
QUALITY PARTS; a Utah general
partnership; QUALITY TRANSPORT
REFRIGERATION PARTS, INC.;
THOMAS A DUFFIN; DANIEL O.
DUFFIN; and DOES 1 through 40,

Appeal No. 980293-CA
Trial Court No. 970900011CV

Argument Priority 15

Defendants and appellees.

APPEAL FROM SUMMARY JUDGMENT
GRANTED BY THE HONORABLE J. DENNIS FREDERICK
THIRD DISTRICT COURT
SALT LAKE COUNTY

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FILED
Utah Court of Appeals

NOV 27 1998

Julia D'Alessandro
Clerk

IN THE UTAH COURT OF APPEALS

GERI PASQUIN,

Plaintiff and appellant,

vs.

JOHN PASQUIN; JIMMIE PASQUIN;
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QUALITY PARTS; a Utah general
partnership; QUALITY TRANSPORT
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STATEMENT REGARDING JURISDICTION

There is no appellate subject matter jurisdiction over the summary judgment that was entered in favor of The Estate of Kory Pasquin because the notice of appeal was not timely filed within 30 days as required under URAP 4(a).

DETERMINATIVE RULE

"(T)he notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within 30 days after the date of entry of the judgment or order appealed from." URAP 4(a)

SUMMARY OF ARGUMENT

- **The notice of appeal was not filed in time as to the estate.**
- **There is no appellate subject matter jurisdiction over the estate.**

ARGUMENT

POINT ONE

The court lacks subject matter jurisdiction over the "Summary Judgment and Final Order Dismissing All Claims Against The Estate of Kory Pasquin" because it was entered as a final judgment under URCP 54(b) on October 21, 1997, and the Notice of Appeal was not filed until December 12, 1997.

Annexed hereto are copies of the estate's summary judgment entered on October 21, 1997 (R. 177-178), and the notice of appeal entered December 12, 1997 (R. 221-222). There is no appellate subject matter jurisdiction, because the notice of appeal was not filed within 30 days as required under URAP 4(a).

Since the summary judgment in favor of the estate was a final judgment (entered upon an express order directing the entry of a final judgment upon a finding by the trial court that there was no just reason for delay) made with an express reference to URCP 54(b), the failure to timely appeal is jurisdictional.

The filing of a notice of appeal after entry of the order on the remaining claims as to the remaining parties is insufficient, because it covers only that order and any nonfinal prior orders and happenings which led up to that final judgment.

As Justice Durham wrote:

"When an appellant files a notice of appeal from a final judgment, he may, in his opening brief, challenge all nonfinal prior orders and happenings which led up to that final judgment." (citation omitted) (emphasis added)

Zions First Nat'l Bank v. Rocky Mountain Irr., 931 P.2d 142 (Utah 1997).

Accordingly, while all "nonfinal" prior orders and happenings which led up to the final judgment as to the remaining claims and remaining parties are before this court, the court lacks subject matter jurisdiction over the final order

that was entered in favor of The Estate of Kory Pasquin, from which no timely appeal was ever taken within the time for appealing as a matter of right.

POINT TWO

Appellant did not raise any contention as to finality of the estate's judgment in the trial court and did not timely raise any such contention on appeal.

Pursuant to URCP 54(b), the summary judgment entered in favor of the estate included an express finding by the trial court that there was no just reason for delay and an express trial court order directing the entry of a final judgment.

Geri Pasquin should have presented any challenge to this finality to Judge Frederick by objecting to the form of the proposed summary judgment prior to its signing and entry¹ or by timely filing a post-judgment trial court motion² after its signing and entry. Having failed to do that, appellant should have timely appealed and then challenged the finality on that appeal.

Geri Pasquin failed to raise this issue in the trial court and then failed to timely invoke subject matter jurisdiction on appeal. Even if this court had subject matter jurisdiction, she failed to timely raise the issue in her opening brief.

As Justice Durham wrote:

"When an appellant files a notice of appeal from a final judgment, he may, in his opening brief, challenge all nonfinal prior orders and happenings which led up to that final judgment." (citation omitted) (emphasis added)

Zions First Nat'l Bank v. Rocky Mountain Irr., 931 P.2d 142 (Utah 1997).

¹ Rule 4-504(2), Code of Judicial Administration.

² Rules 59 and 60, Utah Rules of Civil Procedure.

Accordingly, any effort to raise an issue as to whether Judge Frederick meant what he ordered when he expressly invoked Rule 54(b) should have been raised in the opening brief. Appellant is not only pursuing a strategy that is both risky and bizarre by failing to timely appeal, but she is continuing that risky and bizarre strategy by also failing to raise and address the matter in her opening brief, especially when the matter has been expressly reserved for plenary decision.³

The appeal should be dismissed as to The Estate of Kory Pasquin for lack of appellate court jurisdiction over the subject matter.

POINT THREE

Resolving the appeal based on lack of appellate subject matter jurisdiction over The Estate of Kory Pasquin may appear harsh based on all the alleged misconduct of the late Kory Pasquin, but is consistent with sound policy.

The late Kory Pasquin is accused by his mother, the plaintiff/appellant, of treating her in a most dishonorable, deplorable, deceitful, despicable, and disgraceful manner.⁴ As a mother reasonably relying on the promises of a son, Geri Pasquin slaved away in the family business for pennies on the dollar.

Geri Pasquin did this because she relied on her partnership status as a full partner that had been granted to her by her son as well as on the promise made to her by her son that she would have lifetime employment by the partnership and would not even have to do any work to collect her employee compensation.

³ Order Denying and Deferring The Estate of Kory Pasquin's Motion for Summary Disposition, The Honorable Judith M. Billings, June 12, 1998.

⁴ The estate denies Geri Pasquin's allegations and asserts that Kory Pasquin did not mislead his mother. The dispute over her allegations need not be reached.

Such a generous promise seemed reasonable to her, because her extreme dedication and hard work in handling the office administration at a low wage had freed her son to devote his energies to outside sales and had freed her ex-husband, John Pasquin, Kory's father, to run some of the partnership's more labor-intensive business operations, all of which provided a tremendous benefit to Kory Pasquin.

Then, in a sad betrayal of a mother by a son, Kory Pasquin got together with his father and formed a corporation that completely excluded her. Geri Pasquin was left out in the cold when John and Kory issued all of the stock in the corporation only to themselves, issuing no stock at all to Geri Pasquin.

Geri Pasquin was a particularly vulnerable victim on account of her status as a mother who believed she should be able to trust in her son's promises to her.⁵

He not only violated the first Boy Scout principle of being trustworthy, but he also violated the second Boy Scout principle of being loyal, because his utter lack of trustworthiness betrayed his own mother. His deceit not only violated the ancient command carried down from Mount Sinai not to bear false witness, but he also managed to violate another one of the ancient ten commandments because he dishonored his own mother by making her the victim of his cunning deceit.

One cannot witness this sorry scene without having hackles raised with a natural desire to come to the rescue of a mother so utterly victimized by a son who shamelessly applied the morals of the marketplace to his own mother.

This was cold and calculating capitalism practiced to perfection by a manager so lacking in mercy that he economically exploited his own mother.⁶

⁵ Although even if she is the world's most trusting and easily misled victim, her divorce from John Pasquin should have made her at least a little more careful.

⁶ All such accusations are disputed by the estate, but need not be reached.

And, if lying to his own mother was not enough, the young Kory Pasquin also allegedly lied to one of his girlfriends by telling her that Geri was his partner and had helped him build up the business, by telling his girlfriend numerous times that the business would never have been successful without Geri, that without Geri handling the office and other business affairs they would never have been successful, and that his goal was to build the business up to the point that he could sell it so that Geri, from "her" share of the three-way split of the proceeds of the sale, would be able to retire. (Affidavit of Kristie Dawn Madsen appearing near the end of Geri Pasquin's opening brief, paragraph 3.) While some of this talk may appear to be an example of how to bore your girlfriend on a date, Kory may have had the insight that if he portrayed himself as being kind and protective of his mother, his girlfriend would respond positively. But, based on the claims in this case made by that mother, Geri Pasquin, it was all a world-class lie, as John and Kory had formed a corporation that excluded Geri Pasquin.

A heart-wrenching tale about lying to a mother and a girlfriend, indeed.

However, any first-year litigation associate fresh out of law school could fashion the kind of heart-wrenching tale for a client that has been presented on behalf of Geri Pasquin. If the Court of Appeals reverses the summary judgment, Geri Pasquin's case will likely not be the last case filed by an at-will employee who opportunistically uses the untimely death of a partner to sue the partner's estate and claim that all kinds of lavish promises were made by the dead partner.

Indeed, even in the law, such a fast-track to full partnership might tempt associates and other at-will employees each and every time one of the partners of the legal world dies and the surviving partners are left to deal with amazingly compelling stories about promised riches that were lavishly bestowed by the dead partner who now, conveniently, is dead, gone, and unavailable to testify. (The

rigors of law practice from time to time do seem to contribute to the sad and untimely deaths of some of the esteemed law firm partners in the Utah bar.)

The policy implications of opening the door to all such claims by at-will employees in Utah are staggering, since the Utah appellate courts, so-far, have fashioned a rather moderate and middle-of-the-road approach to the balancing of the rights of Utah's employers and their employees in at-will employment law.

An employee who believes he or she has been admitted to the partnership and who believes that he or she has been granted guaranteed lifetime employment without the need to even perform any work needs to promptly secure signatures documenting and perfecting such valuable employment and partnership rights.

Such an employee should not be allowed to belatedly come to court after the death of a manager or partner to make astounding claims about promises.

Especially where the claimed partnership and lifetime-employment are as grand and generous as the ones alleged in this case should the employee claiming such a wonderful prize promised by the dead be expected to reduce it to writing and perfect it rather than appearing in court based on alleged oral promises.

While resolving this appeal based on the failure to timely appeal is not a resolution that resolves any additional issues of law as to the estate, it does appear to lead to a result that is consistent with sound judicial policy that is aimed at performing a reasonable gatekeeping function at the courthouse door consistent with the at-will employment case authorities that have been developed in Utah.

In other words, by failing to timely appeal, Geri Pasquin made it a little easier for this court to reach a result as to the estate that it should have reached anyway based on the policy implications of the claims that have been asserted against the estate grounded on allegations of double-dealing and double-talk by the late Kory Pasquin, who is, unfortunately, not here to defend himself.

That, by itself, is perhaps the most compelling reason to so rule.

CONCLUSION

The two-pronged assumption on which Geri Pasquin's appeal appears to be grounded is (1) that Kory Pasquin really didn't mean it when he formed a corporation with John Pasquin and excluded Geri Pasquin, and, (2) that Judge Frederick really didn't mean it when he invoked the provisions of URCP 54(b).

Instead of pointing to anything in the record that provides any evidence supporting either of these two points, Geri Pasquin, instead, makes compelling claims about unfairness and deceit in being misled about her employment status.

While her claims are compelling,⁷ they fail as a matter of law, and the estate's summary judgment entered by Judge Frederick should now be affirmed, or, in the alternative, the appeal should be dismissed with prejudice as to the estate for failure of appellant to perfect appellate subject matter jurisdiction.

DATED THIS 27 DAY OF NOVEMBER, 1998.

ROBERT H. COPIER
Attorney for Candance M. Souter, Personal
Representative, The Estate of Kory Pasquin

⁷ As a final indignity, the late Kory Pasquin cut-off his mother from any inheritance by leaving behind one woman who has his child as a matter of law and another woman who has presented herself with a baby in one arm and a paternity claim against the estate in her other arm which she is pursuing. This second woman testified by affidavit on behalf of Geri Pasquin in this case while at the same time pursuing said paternity claim against the estate. See Affidavit of Kristie Dawn Madsen appearing near the end of Geri Pasquin's opening brief.

CERTIFICATE OF SERVICE

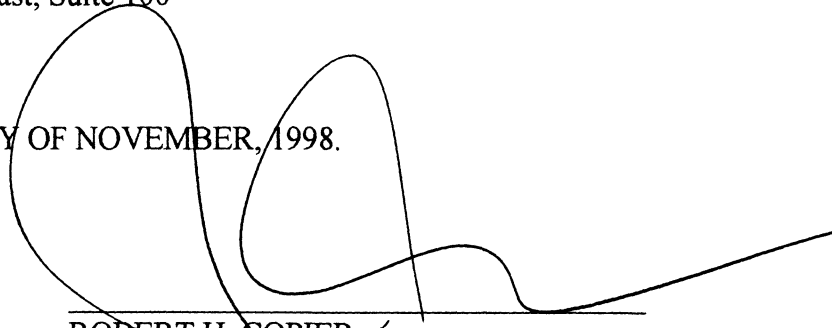
True copies of APPELLEE'S BRIEF OF THE ESTATE OF KORY
PASQUIN were caused to be mailed to the following attorneys of record for all
parties to this appeal on even-date herewith:

Brian W. Steffensen
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Steven L. Taylor
Attorney at Law
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SLC UT 84102

DATED THIS 27 DAY OF NOVEMBER, 1998.



ROBERT H. COPIER
Attorney for Candance M. Souter, Personal
Representative, The Estate of Kory Pasquin

ADDENDUM

A-1 Final Order

A-2 Notice of Appeal

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OCT 21 1997
By J. Dennis Frederick
Clerk of Court

IN THE THIRD JUDICIAL DISTRICT COURT
SALT LAKE COUNTY, STATE OF UTAH
DIVISION ONE

GERI PASQUIN,

Plaintiff,

vs.

**SUMMARY JUDGMENT
AND FINAL ORDER
DISMISSING ALL CLAIMS
AGAINST THE ESTATE
OF KORY PASQUIN**

JOHN PASQUIN; JIMMIE PASQUIN;
THE ESTATE OF KORY PASQUIN;
QUALITY PARTS; a Utah general
partnership; QUALITY TRANSPORT
REFRIGERATION PARTS, INC.;
THOMAS A DUFFIN; DANIEL O.
DUFFIN; and DOES 1 through 40,

Civil No. 970900011CV

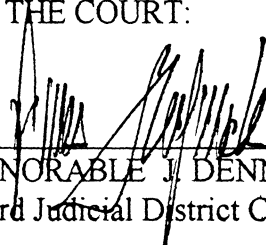
Judge J. Dennis Frederick

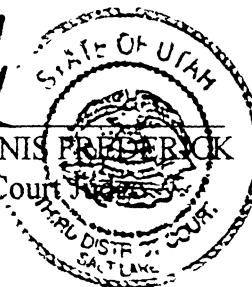
Defendants.

The Estate of Kory Pasquin's motion for summary judgment having been properly submitted for decision of the court pursuant to the notice provisions of the Code of Judicial Administration, and the court having ruled by minute entry dated October 8, 1997, it is hereby ORDERED that the said motion be, and is hereby, GRANTED, and that all of plaintiff's claims herein against the Estate of Kory Pasquin be, and are hereby, dismissed, WITH PREJUDICE, on the merits, no cause of action. The court hereby expressly finds that there is no just reason for any delay and the court hereby expressly directs that this dismissal of all of the claims herein against the Estate of Kory Pasquin shall be, and is, declared to be a final judgment as to all of the said claims pursuant to provisions of URCP 54(b).

DATED THIS 21st DAY OF Oct, 1997.

BY THE COURT:


HONORABLE J. DENNIS FREDERICK
Third Judicial District Court



CERTIFICATE OF SERVICE

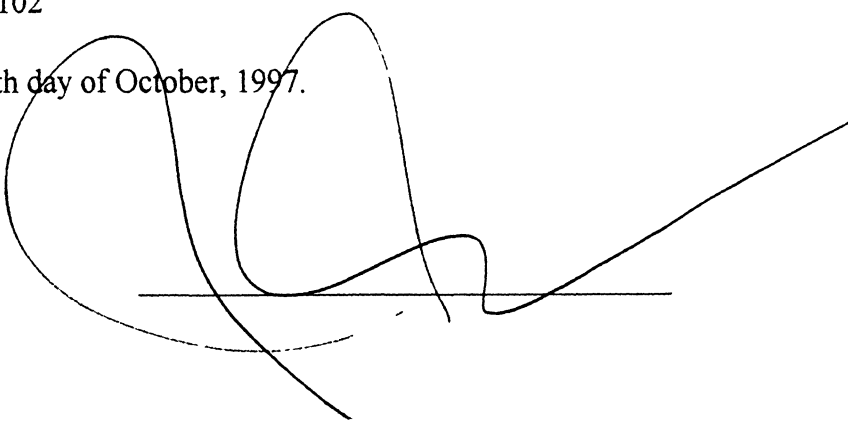
True copies of the foregoing were mailed (prior to signing by the court) to the following attorneys for the plaintiff and for all of the named codefendants on even-date herewith:

Brian W. Steffensen
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675 East 2100 South, Suite 350
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Carmen E. Kipp
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Steven L. Taylor
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DATED this, the 9th day of October, 1997.



BRIAN W. STEFFENSEN, P.C. (#3092)
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Attorney for Plaintiff

FILED
DISTRICT COURT
97 DEC 12 AM 11:28
THE
SALT LAKE COUNTY
BY 
CLERK

IN THE THIRD DISTRICT COURT IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

Geri Pasquin

Notice of Appeal

vs.


John Pasquin; Jimmie Pasquin;
The Estate of Kory Pasquin;
Quality Parts, a Utah general
partnership; Quality Transport
Refrigeration Parts, Inc.; Thomas
A. Duffin; Daniel O. Duffin;
Does 1-40

Civil No. 970900011 CV

Judge J. Dennis Frederick

Plaintiff hereby appeals all orders and judgments entered herein by Judge
Frederick, including without limitation, the orders granting summary judgment in favor of
the defendants and against the plaintiff whereby plaintiff's claims against these defendants
were dismissed with prejudice, and the orders denying plaintiff's objections to the wording
of the orders and/or judgments.

DATED the 9th day of December, 1997.


Brian W. Steffensen
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of December, 1997, I caused a true and correct copy of the foregoing instrument to be X mailed, postage prepaid; and/or hand-delivered by _____ fax and/or by _____ courier; addressed to:

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Robert Copier
243 East 400 South, #200
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FAX 531-7928

A handwritten signature in cursive script, reading "Melissa Hansen", written over a horizontal line.